Supreme Court, U.S.
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(2)

No. 04-359

In The

Supreme Court of the United States

EDWARD J. HABERERN, M.D.
Petitioner

v.

SPRAGUE & SPRAGUE, a Law Firm, et al.
Respondents

On Petition For Writ of Certiorari
To the Supreme Court of the Commonwealth of Pennsylvania

REPLY TO BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Andrew K. Parker, Esquire
I.D. No. 7635
Counsel of Record for Petitioner
371 Tamarack Drive
Allentown, PA 18104
(610) 776-8410

RESPONSE TO COUNTER-STATEMENT OF QUESTIONS PRESENTED FOR REVIEW

1. **Petitioner immediately upon filing and on the face of the Complaint in the Philadelphia Court of Common Pleas on October 24. 2001 put Respondents *and the world* on notice that Plaintiff in his case had "JURY TRIAL DEMANDED", repeated in subsequent pleadings and proposed Orders at least sixteen (16) times thereafter on the record submitted to the Pennsylvania Supreme Court.**

No Federal Question had accrued nor could have accrued nor was theretofore an issue, until the Supreme Court of Pennsylvania, finally, (*with unequivocal knowledge that Plaintiff had positively elected "JURY TRIAL DEMANDED"*) by silence, by inaction, by Per Curiam Denials of Plaintiff's Requests for Certiorari and by its crystal clear failure to examine the record *had thereby condoned, aided, abetted, violated, obstructed, and abolished Plaintiff's Due Process under both the Seventh and the Fourteenth Amendments of the Constitution of the United States of America, to wit:*

a) By apparently approving of Respondents' putative fraudulent entry and validation of a non-existent *grant of Summary Judgment* (?) on the Prothonotary's docket;

b) By apparent authorization of Respondents' optional circumvention of Rule 236(a) of the Pennsylvania Rules of Civil Procedure, thereby procedurally aiding and abetting Respondents' ability to exact dual *fraudulent procedural judgment notice practice* allegedly sent (by personal choice, directly, not sent, withheld or not even in existence, as in the case at bar) *only by and through the issuing Judge.* Thus, at the option of an evil interested party or parties, the losing adverse party would, as here, never receive the *mandatory actual Prothonotary's 236(a) Judgment Notice of commencement of time from which to effect a timely appeal; and*

c) By ultimately and lastly denying Petitioner-Plaintiff of his

actual day in court, final due process and his requested Jury Trial that is guaranteed by both the Pennsylvania and United States Constitutions and respective Rules of Civil Procedure thereunto appertaining, a distinctly Federal Question.

2, Because NO JUDGMENT IN FACT WAS IN ESSE, neither the Prothonotary nor the alleged Court of Common Pleas in the case at bar had the opportunity to send any legal Judgment Notice whatsoever from which to appeal and a Prothonotary's False Docket Entry of Judgment with NO ACTUAL JUDGMENT is NOT NOTICE OF JUDGMENT, but is feckless, equivocal, fraudulent, non-existent and, in reality and logic, *no criteria where impossibility can neither be construed as timely or untimely.* Contrary to Respondents' equivocation, *neither the Pennsylvania Supreme Court nor any other Court Below (having elected not to file any written opinion* on the merits) *has ever considered, ruled upon or evaluated the facts nor the law of the case, now completely open for full and thorough scrutiny.* Any other construction is mere speculation, theory or equivocation, not the Law.

Reasonable men will agree that Due Process will find that it is foolhardy and impossible to appeal, even Nunc Pro Tunc, from a Non-Existent Judgment shown to exist only as a Docket Entry. For this very reason Petitioner on denial of appeal *nunc pro tunc*, with neither opinions nor justification, *demanded certiorari* (abolished in Pennsylvania with a Petition for Review to replace it: APPENDIX NO. 6) both in the Superior Court and again in the Supreme Court of Pennsylvania. The lack of Judgment Notice in question (APPENDIX NO. 4), explicitly explained (APPENDIX NO. 3) by your Petitioner to be both fraudulent and a "breakdown in the judicial administration of the Court Below, of course, abused and circumvented Pennsylvania Supreme Court Judgment Notice Rule 236(a)(2) of the Pennsylvania Rules of Civil Procedure, which the Superior Court was neither authorized nor equipped to alter, explain, handle or construe, a matter completely within the exclusive jurisdiction and province of the Pennsylvania Supreme Court, endowed with sole authority and duty to change, verify and enforce or abolish the Procedural Rule in question.

change, verify and enforce or abolish the Procedural Rule in question.

RESPONSE TO COUNTER-STATEMENT OF THE CASE

Respondents' explanations, which have attempted to construe, apply or excuse their own and/or the court's actions or inactions below, must be considered to be mere speculation or wishful thinking where, as here, the courts below have not advised us about those constructions and interpretations through the written Opinion. Speculation has no reserved seat in our search and quest for the truth herein, especially via certiorari, where a remedy for breach of the truth is our final goal.

The salient facts of Petitioner's Request for Certiorari are virtually admitted by Respondents, under application of United States Supreme Court Rule 15.2 (APPENDIX 1), namely, the following:

a) A false docket entry of April 8, 2002, with no genuine Judgment to support it (APPENDIX 5);

b) The total absence of any *bona fide judgment* in the Office of the Prothonotary (APPENDIX NO. 5);

c) Respondents' production by brief of a false, forged document Respondents represent to be a judgment (APPENDIX NO. 2);

d) Respondents' failure to authenticate and answer Petitioner's colloquy of ten (10) (APPENDIX NO. 3);

e) Admission and equivocation on page 2 of their Brief of in Opposition that on April 3, 2002 "the Honorable Renee Cardwell Hughes granted Respondents' motion for summary judgment . . . Order entering summary judgment bears the Court's stamp of the same date attesting that 'copies [were] sent *(by the Court)*' pursuant to Rule 236 of the Pennsylvania Rules of Civil Procedure . . . ". Rule

236(a)(2) mandates that Notice be "sent" on receipt of the true Judgment only by the Office of the Prothonotary, *not by the Court.* Respondents' story relates how Respondents circumvented the pertinent Supreme Court Rules, and their methodology for defeat of Notice "never sent" to the Plaintiff (APPENDIX NO. 4).

RESPONSE TO REASONS FOR DENYING CERTIORARI

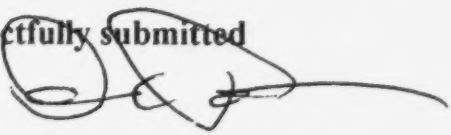
In each instance of breach of fair play herein, Respondents knew that their very objective was to defeat Petitioner's Demand for Jury Trial, universally known and protected by the Seventh Amendment of the United States Constitution, not just for federal litigants but also for those who litigate in State Courts as well. The provision: "where the value in controversy shall exceed twenty dollars" infers State coverage. No known $20.00 claim is within the jurisdiction of or knowingly handled by the Federal Court Litigating System. Enforcement of the guarantee of Jury Trial, as in the case at bar, is well within the province of the United States Supreme Court. Everyone of Petitioner's pleadings below bears his Demand for Jury Trial, well known to the Pennsylvania Supreme Court when it denied Petitioner his Request for Certiorari to preserve his case from oblivion by unscrupulous litigators who would dare defy and circumvent the law and cheat men of their right to be heard by their peers in State Court. The time in right, The need us clear.

Respondents' assertions and citations of case law have no direct application to the admitted facts in the case at bar, where justice was defeated by slight of hand, deliberate deceit and manipulation and circumvention of the Pennsylvania Rules of Court. Petitioner, having been, without explanation or opinion, denied an appeal *nunc pro tunc from a Docket Entry unsupported by a bona fide judgment of record,* knew that the matter was out of hand because of a breakdown in the judicial system which denied him Notice of Judgment from which to appeal. But Petitioner also knew and inferred that there was in fact no *bona fide judgment* in existence from which to appeal nor certiorari proceedings to plead his cause to the courts below to correct the

ongoing miscarriage of justice. Hence, Petitioner proceeded and timely filed in the Superior Court proceeding under Chapter 15 of 42 Pa.C.S.A. section 1501 et seq. (APPENDIX NO. 6), the system's apparent remedy to completely correct all matters at hand. Although speculation, since no opinion was rendered, it is believed that the Superior Court neglected to correct the Rule problem because enforcement and interpretation of a Rule originating with the Supreme Court must be handled by that Court exclusively.

For these and other reasons more evident to this Court, Petitioner believes that this Writ of Certiorari to the Supreme Court of Pennsylvania will permanently close an ugly loophole of injustice.

Respectfully submitted



Andrew K. Parker, Esquire
I.D. 7535
Counsel of Record for Petitioner
371 Tamarack Drive
Allentown, PA 18104
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SPRAGUE & SPRAGUE, a Law Firm, et al.
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APPENDIX TO REPLY TO BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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APPENDIX NO. 1
SUPREME COURT RULE 15. 2.
WAIVER AND ADMISSIONS BY RESPONDENTS

Rule 15. 2. Provides, inter alia:

" . . . In addition to presenting other arguments . . . the brief in opposition should address any perceived misstatement of fact or law in the petition that bears on what issues properly would be before the Court if certiorari were granted. Counsel are admonished that they have an obligation to the Court to point out in the brief in opposition, and not later, any perceived misstatement made in the petition. Any objection to consideration of a question presented based on what occurred in the proceedings below, if the objection does not go to jurisdiction, may be deemed waived unless called upon to the Court's attention in the brief in opposition."

APPENDIX NO. 2 (PSCRR- V. 1, 44a, 51a-2 & 86a)
(PSCRR = PENNSYLVANIA SUPREME COURT REPRODUCED RECORD)

THE FALSE, PURPORTED, UNAUTHENTICATED AND/OR FRAUDULENT REPRESENTATION ATTACHED TO RESPONDENTS' MEMORANDUM OF JANUARY 6, 2003

" Alan J. Davis, Esquire
I.D. No. 0353
Martin D. Bryce, Jr., Esquire
I.D. 59409
BALLARD SPAHR ANDREWS & INGERSOLL, LLP.
1735 Market Street, 51st Floor
Philadelphia, PA 19103
215/665-8500
Attorneys for Defendants Sprague and Sprague, Richard A. Sprague, Thomas A. Sprague, William H.Wolf, Jr.,a/k/a Bill Wolf,James J. West, H.Coleman Switkay,Vincent F.Presto, Geoffrey R.Johnson,Geoffrey C.Jarvis,Joseph R.Podraza,Jr,Theodore J. Chylack, Joseph J. McAlee, Peter Konolige; T. Truxton Hare, III and David S.Lubin

010570

EDWARD J. HABERERN M. D.,	:	COURT OF COMMON PLEAS
	:	PHILADELPHIA COUNTY
Plaintiff	:	CIVIL ACTION - LAW
	:	
V.	:	OCTOBER TERM, 2001
	:	
SPRAGUE AND SPRAGUE, a Law Firm, et al,.	:	N0. 003430
	:	
Defendants.	:	

ORDER

AND NOW, this 3rd day of April, 2002, upon consideration of defendants' Motion for Summary Judgment, and Plaintiff's opposition thereto, it is ORDERED that Defendants' Motion for Summary Judgment is GRANTED and this action is DISMISSED WITH PREJUDICE.

BY THE COURT

(S) (????????????????????)

THE HONORABLE
RENEE CARDWELL HUGHES
^ (rubber stamp: crooked)

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PURSUANT TO ' "'(b)
APR 0 3 2002,
Firs;;;
User I.D. SLE

PHL_A #15696896 v1

APPENDIX NO. 3 (PSCRR - V. 1, 66a, 67a, 68a & 69a)
PLAINTIFF-PETITIONER'S SUR ANSWER TO RESPONDENTS' SUR REPLY IN SUPPORT OF RESPONSE TO PLAINTIFF'S PETITION FOR APPEAL NUNC PRO TUNC
(Together with Petitioner's unanswered COLLOQUY with respect to Respondents' attempt to offer a forged document as evidence and proof of Respondents' "non-negligent circumstances, fraud and breakdown in the Court Below")

"Plaintiff produced as Exhibit "A" (Appendix No. 4) attached to the Petition for Appeal Nunc Pro Tunc, the Affidavit of Carl Veno, who affirmatively stated, inter alia:

1. That (affiant) has been the General Office Manager for Plaintiff's counsel from February 2002 through November 5, 2002;

2. That Affiant exclusively handled all of Parker's 'incoming mail and facsimile transmissions';

3. That affiant was alerted as to mail sent to Parker by the Philadelphia County Office of the Prothonotary and/or the Judiciary of the Court of Common Pleas;

4. That Parker put Affiant on notice that he expected receipt of notice of a hearing to be set by the Philadelphia Court regarding Defendants' pending Motion for Summary Judgment; and

5. 'NO LETTER, PACKAGE OR CORRESPONDENCE WAS RECEIVED BY ANDREW K. PARKER, ESQUIRE, BY, TROUGH OR FROM THE PROTHONOTARY OR THE JUDICIARY OF THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY during February, 2002 through November 5, 2002.'

Let the record reflect that at no time did Plaintiff-Petitioner in his Petition for Appeal Nunc Pro Tunc imply, infer or use as an excuse

for non receipt of the purported Order of Judgment (APPENDIX NO. 3), as falsely and repeated contended by counsel for the Respondents (page 4 of Sur-Reply), 'because he relocated his offices.' The time and/or relocation on April 22, 2002 of the Office of Plaintiff's counsel has no relevance nor material bearing on whether or not he was in fact duly notified under Rule 236 of the Pennsylvania Rules of Civil Procedure. However, the fact that Plaintiff received no such Notice does have a material bearing. Respondents' applied methodology accentuated by negative assertions and equivocal lack of evidence to prove those assertions certainly must be considered by the Court. *Cui bono.*

Petitioner is entitled to proof by Affidavit or otherwise of Respondents' bald assertions, touching on hearsay or equivocation, to wit:

1. Was the purported Order actually received by Respondents that same day as they contend (p. 2) on April 8, 2002, having been filed '08-APR 15:49:24', according to the docket entry?

2. Was the purported Order, Respondents' Exhibit A (APPENDIX NO. 2) in fact signed by Judge Hughes in her own handwriting?

3. Did Judge Hughes support her purported Order with a judicial opinion?

4. Did Sharon Echols work for Judge Hughes on April 3, 2002?

5. Did Sharon Echols herself actually stamp on the purported Order the partially obliterated notation in question and thereafter place her initials on the document?

6. Did Sharon Echols and by what medium of communication send the purported Order and cover letter to anyone on April 3, 2002?

7. Why was an original Order of Judgment not prepared and

why, if in fact, was the purported Order with Respondents' counsels' names and address used instead?

8. Why did the purported Order fail to contain the Prothonotary's filing stamp on the document in question?

9. Does the Prothonotary of Philadelphia County, contrary to Rule 236(a)(2) let others send out Notice and Orders of Summary Judgment before entry of the same on the docket?

10. When did a quest for the truth by drawing deficiencies and equivocation to the Court's attention become 'scurrilous', as contended on page 3 of the Sur-Reply?

In addition, it is contended that this case requires careful scrutiny and investigation by Philadelphia judicial authorities and additional questions need to be answered, to wit:

a) Do the above-mentioned combination of deficiencies, questions and inconclusiveness in failing to notify the Plaintiff of the entry of judgment against him amount to a breakdown in the Court's Operations by presumption and/or illustrate equivocal misconduct amounting to such a breakdown?

b) Is the evidence clear and unequivocal so as to demonstrate the breakdown in the Philadelphia Court's Operations (including that of the Prothonotary) and/or unusual circumstances involving non-negligent acts of someone other than your Petitioner, in the Court's failure to give Rule 236 Notice to your Petitioner of a final Order from which a timely appeal might be made, facts which by their impact on Petitioner subject him to the equivalent and voiding consequences of fraud?"

APPENDIX NO. 4 (PSCRR- V. 1, 14a)
AFFIDAVIT OF CARL A. VENO IN SUPPORT OF PETITION FOR APPEAL NUNC PRO TUNC

"IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW

EDWARD J. HABERERN, M.D.,	)	
Plaintiff,	)	
	)	**October Term, 2001**
vs.	)	**No. 003430**
	)	
SPRAGUE AND SPRAGUE, a Law Firm,	)	
et al.	)	
Defendants.	)	**JURY TRIAL DEMANDED**

AFFIDAVIT IN SUPPORT OF PETITION FOR APPEAL NUNC PRO TUNC

COMMONWEALTH OF PENNSYLVANIA	)	
	)	**ss**
COUNTY OF LEHIGH	)	

CARL V. VENO, being first duly sworn under oath according to law: deposes and says that he is and has been since June, 1997 the General Office Manager for the Law Offices of Linda S. Luther-Veno, Esquire and Andrew K. Parker, Esquire (I.D. 07635) located at 2814 Walbert Avenue, Allentown, Lehigh County, Pennsylvania from June, 1997 until April 22, 2002, when said attorneys moved to the Paragon Centre - Suite 203, 1611 Pond Road, Allentown, Lehigh County, Pennsylvania, where your affiant has continued to date his duties as the General Office Manager for said attorneys. During this period of time,

your affiant has exclusively, prudently and carefully noted, received, handled and distributed all incoming mail and facsimile transmissions from whatever source addressed to said attorneys and was particulary careful, alerted, advised and watchful for any and all incoming mail from the Office of the Prothonotary or the Judiciary of the Court of Common Pleas in the above-captioned matter as addressed to attorney Andrew K. Parker, who put affiant on notice that he was expecting an important, official Notice from the Philadelphia Court of Common Pleas with respect to a hearing to be set by the Court regarding Defendants' Motion for Summary Judgment. Your affiant can truthfully state, without equivocation or reservation, that NO LETTER, PACKAGE OR CORRESPONDENCE WAS RECEIVED BY ANDREW K. PARKER, ESQUIRE, BY, THROUGH OR FROM THE PROTHONOTARY OR THE JUDICIARY OF THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY during February, 2002 through November 5, 2002,

AND further affiant sayeth not.

S/_____
Carl A. Veno, Office Manage for
Linda S. Luther-Veno, Esquire and
Andrew K. Parker, Esquire

SUBSCRIBED and sworn to before me,
A Notary Public, on this 29th day of November, 2002.

S/ Betty L. Shosh **My commission expires 2/17/03**
Notary Public

Notarial Seal
Betty L.Shosh, Notary Public
Lower Macungie Twp., Lehigh County
My commission expires Feb. 17, 2003

APPENDIX NO. 5 (PSCRR: V. 3, 278a)
AFFIDAVIT OF WILLIAM O. VIVA
NO SUMMARY JUDGMENT FOUND NOR DISCOVERED
FILED IN THIS CASE BY THE PROTHONOTARY
OF PHILADELPHIA COUNTY, PENNSYLVANIA

IN THE SUPREME COURT OF PENNSYLVANIA
Allocatur Docket No. _____

EDWARD J. HABERERN, M.D.,
Petitioner,

vs.

SPRAGUE & SPRAGUE, a Law Firm, *et al.*
Respondents.

CIVIL ACTION - On Appeal from the PER CURIAM Judgment entered May 6, 2003 in the Superior Court of Pennsylvania, No. 42 EDM (C.P. PHILADELPHIA COUNTY No. 003430 October Term 2001)

AFFIDAVIT OF WILLIAM O. VIVA

COMMONWEALTH OF PENNSYLVANIA)
) ss:
COUNTY OF LEHIGH)

William O. Viva, upon being first duly sworn under oath according to law, deposes and says that the following affidavit is made from affiant's own personal knowledge, experience, information and belief; that on April 9, 2003 on directions of Attorney Andrew K. Parker, Esquire, your affiant paid $30.00 cash to the office of the Prothonotary of Philadelphia County Court of Common Pleas and secured a receipt for the sole purpose of obtaining "a Certified Copy of Judge Hughes' Order granting Defendants Motion for

Summary Judgment, dated April 3, 2001, in *Haberern v. Sprague & Sprague, a Law Firm, et al., October Term, No. 003430"*; that said Clerk then advised your affiant that *she could not immediately locate said Order* but would send the Certified Copy directly to the Office of Attorney Parker at the Paragon Center, Suite 203, 1611 Pond Road, Allentown, PA 18104; that Attorney Parker subsequently advised affiant that he had not received the Certified Copy of said Order and, therefore, affiant returned to the Prothonotary's Office on May 23, 2003 with his receipt and demanded that he be furnished with the Certified Copy of said Order for which he had already paid; affiant was made to wait by a female clerk for two to three hours, while she conducted an investigation and search of the courthouse records; the female clerk then returned and advised that she had checked the courthouse records and that she *could not find Judge Hughes' said Order dated April 3, 2001;* and that said female clerk advised your affiant that she would continue her search and if she found the said Order, she sould forward it to Attorney Parker.

And further affiant sayeth not.

S/_____
William O. Viva

SUBSCRIBED and sworn to before me,
a Notary Public, on this 29 day of May, 2003.

S/ Stephen M. Disimone
Notary Public

Notarial Seal
Stephen M. Disimone, Notary Public
Easttown Twp., Chester County
My Commission Expires Sept. 18. 2004

APPENDIX NO. 6 - PETITION FOR REVIEW PENNSYLVANIA RULES OF APPELLATE PROCEDURE 42 C.S.A., section 1501, et seq

Rule 1501(a)(3) provides, inter alia:
"Objections to a determination by a government unit . . . or upon writs of certiorari or prohibition."

Rule 1501(d) provides:
Jurisdiction of courts unaffected. This chapter does not enlarge or otherwise modify the jurisdiction and powers of the Commonwealth Court or any other court.

Note: This chapter applies to review of any 'determination' of a 'government unit' as defined by Rule 102* . . . A 'determination' means 'action or inaction by a government unit which action or inaction is subject to judicial review by a court under Section 9 of Article V of the Constitution of Pennsylvania or otherwise . . . ".

* "Government unit" is defined as " . . . any court or other officer or agency of the unified judicial system . . . ".

Rule 1502 provides:
Exclusive Procedure

The appeal, the actions of equity, replevin, mandamus and quo warranto, the action for a declaratory judgment, and writs of certiorari and prohibition are abolished insofar as they relate to matters within the scope of a petition for review under this chapter. The petition for review, insofar as applicable under this chapter, *shall be the exclusive procedure for judicial review of a determination of a government unit.* (Emphasis supplied)